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9 **IN THE UNITED STATES DISTRICT COURT**

10 **FOR THE DISTRICT OF ARIZONA**

11 Ernest Joseph Atencio, et al.,

12 Plaintiffs,

13 v.

14 Sheriff Joseph Arpaio, et al.,

15 Defendants.

Case No. 2:12-CV-02376-PHX-PGR

**DEFENDANTS ARPAIO, CARRASCO
DOMINGUEZ, FOSTER, KAISER,
SCHEFFNER, WEIERS AND VAZQUEZ'S
STATEMENT OF FACTS IN SUPPORT
OF THEIR MOTION FOR SUMMARY
JUDGMENT**

16 Defendants Arpaio, Carrasco, Dominguez, Foster, Kaiser, Scheffner, Weiers and
17 Vazquez submit the following Statement of Facts in support of their summary judgment
18 motion.

19 **Atencio's Arrival at the Jail on December 16, 2011**

20 1. Ernest Marty Atencio ("Atencio") was placed in a medical holding area
21 after he came into the jail with other detainees. Atencio repeatedly ignored orders to sit
22 down and eventually had to be handcuffed to the bench. [September 9, 2013 Deposition
23 of Patrick Hanlon ("Hanlon Depo."), attached as Ex. 1, at 28; Declaration of Jason
24 Weiers ("Weiers' Decl.") attached as Ex. 4, at ¶ 4; CD containing video clips of Atencio
25 in Central Intake ("Intake Video"), attached as Ex. 11, N Hold Area NE.]

26 2. Phoenix Police Officer ("PPO") Hanlon removed Atencio from a cell with
27 other prisoners after observing Atencio get face-to-face with another prisoner. PPO
28

1 Hanlon got the impression from Atencio's body language that he was trying to agitate the
2 other prisoners. [Hanlon Depo., Ex. 1, at 76-77].

3 3. During the intake process, Atencio was held in an isolation cell. [Weiers
4 Decl., Ex. 4, at ¶ 6; Hanlon Depo., Ex. 1, at 77-78.]

5 4. It is typical to have a supervisor present if a detainee is causing problems
6 during intake. Atencio had demonstrated behavior that made Weiers more worried about
7 him doing something than the average inmate. For instance, he broke an outlet in the wall
8 at the medical screening with his foot, and he was yelling constantly and failing to follow
9 orders. [October 23, 2013 Deposition of Jason Weiers ("Weiers Depo."), attached as Ex.
10 6, at 57, 71-72.]

11 5. Atencio seemed to intentionally break the wall outlet. He seemed agitated,
12 turned toward the wall, and then directly kicked the outlet. [Weiers Depo., Ex. 6, at 72.]

13 6. During the medical intake screening in the jail, Ernest Marty Atencio
14 ("Atencio") was asked, "Are you thinking of hurting yourself?" and he answered, "Yes."
15 [December 4, 2013 Deposition of William McLean ("McLean Depo.") attached as Ex. 2,
16 at 53; Hanlon Depo., Ex. 1, at 70.]

17 7. Correctional Health Services ("CHS") Nurse McLean determined that
18 Atencio should be placed in a safe cell for his own safety. Defendant Scheffner did not
19 order that Atencio be placed into a safe cell. [McLean Depo., Ex. 2, at 54; October 21,
20 2013 Deposition of Monica Scarpatti, attached as Ex. 3, at 77; May 13, 2014 Deposition
21 of Anthony Scheffner ("Scheffner Depo."), attached as Ex. 13, at 65.]

22 8. Detention supervisors Defendant Weiers and Defendant Kaiser were aware
23 that CHS staff had determined that Atencio was to be placed into a safe cell. Defendant
24 Weiers was aware that it was because Atencio had made suicidal comments. [Weiers
25 Decl., Ex. 4, at ¶ 5; Declaration of Craig Kaiser ("Kaiser Decl."), attached as Ex. 5, at
26 ¶ 8.]

27 9. When a detainee is to be placed in a safe cell, medical staff writes "safe
28 cell" on the booking slip so that detention staff knows that after the detainee is searched

1 and accepted into the jail, he or she should be placed in a safe cell. The reason for the
2 placement is not usually written there. [Weiers Depo., Ex. 6, at 78.]

3 10. Typically more officers are present during the booking process when
4 someone is going into a safe cell because the inmate has to be placed into the safe cell at
5 the end of the process. Officers never know how strong someone is going to be, what
6 their actions will be, or how unpredictable they will be. [Weiers Depo., Ex. 6, at 26-27,
7 79.]

8 **Events in the Line Scan Room/Search Area**

9 11. The search area of Central Intake is where detainees are searched before
10 they are accepted into the jail. The search is the last step in the intake procedure and is
11 done to check for weapons and other contraband, such as drugs. [Declaration of Adrian
12 Dominguez (“Dominguez Decl.”), attached as Ex. 7, at ¶ 5.]

13 12. As part of the search process, detainees are required to remove their jackets,
14 shoes, and socks, so that these articles of clothing can be run through an x-ray machine.
15 The detainee is also physically searched. [Dominguez Decl., Ex. 7, at ¶ 5.]

16 13. It is a standard corrections practice to search all detainees that are processed
17 into a jail facility, including a search of their shoes and clothing, to ensure that they do
18 not bring any contraband into the facility, such as drugs or weapons. Such a search is
19 done for the safety of the detainee, other detainees, and detention staff, and for the
20 security of the facility. [Declaration of Roy T. Gravette (“Gravette Decl.”), attached as
21 Ex. 8, at ¶ 7.]

22 14. The importance of searching shoes and other clothing worn into the jail is
23 paramount to having a safe and secure jail. Shoes have been used to hide razor blades,
24 knives, other weapons, handcuff keys, and drugs. [Gravette Decl., Ex. 8, at ¶ 8].

25 15. PPO Patrick Hanlon escorted Atencio to the search area, line scan room.
26 [Hanlon Depo., Ex. 1, at 45.]

27 16. Atencio was not cooperative. The Phoenix officers were trying to move
28 Atencio toward the search area and he didn’t want to walk. PPO Hanlon had to push him

1 along. There were at least eight other detainees seated on the bench just outside the
2 search area. [Hanlon Depo., Ex. 1, at 78; Declaration of Christopher Foster (“Foster
3 Decl.”), attached as Ex. 9, ¶ 5; Intake Video, Ex. 11, clips Prebooking S View from
4 2:32:16 – 2:33:11, Prebooking N View from 2:32:16 – 2:33:05, Acceptance Door.]

5 17. Defendant Weiers followed the Phoenix officers and Atencio through the
6 pre-booking area. It appeared that Atencio was resisting walking by leaning back. On the
7 way to the search area, Atencio also dropped his jacket on the floor. Weiers picked it up
8 and carried it into the search area. [Weiers Decl., Ex. 4, at ¶¶ 6, 7; Intake Video, Ex. 11,
9 Prebooking S View from 2:32:16 – 2:33:11, Prebooking N View from 2:32:16 – 2:33:05,
10 Acceptance Door.].

11 18. In the line scan room, PPO Hanlon instructed Atencio to take his shoes off.
12 Atencio initially cooperated, but when they told him to take his socks off, he turned to
13 one of the Phoenix officers and said, “You take my socks off.” The Phoenix officers
14 again instructed Atencio to take his shoes off, and instead Atencio put his shoe back on.
15 [Hanlon Depo., Ex. 1, at 48; Kaiser Decl., Ex. 5, at ¶ 11; Weiers Decl., Ex. 4, at ¶ 9;
16 Declaration of Jaime Carrasco (“Carrasco Decl.”), attached as Ex. 10, at ¶ 8; Foster Decl.,
17 Ex. 9, at ¶ 6.]

18 19. After several requests to take his shoes off, Atencio tensed his arms. PPO
19 Hanlon was concerned that Atencio was becoming aggressive. At approximately 2:34:39
20 a.m., PPO Hanlon took control of one of Atencio’s wrists. [Hanlon Depo., Ex. 1, at 48,
21 78; Intake Video, Ex. 11, clip Linescan SW from 2:34:24 - 2:34:44.]

22 20. Atencio began actively resisting as soon as the Phoenix officers went hands
23 on. [Dominguez Decl., Ex. 7, at ¶ 9; Intake Video, Ex. 11, Linescan SW from 2:34:40 –
24 2:34:46.]

25 21. The Phoenix officers tried to get Atencio’s arms behind his back. Atencio
26 was forcibly resisting to the point that even though there was one officer on each of
27 Atencio’s arms, they were not able to get his arms behind his back. Atencio was
28

1 overpowering the Phoenix officers. [Weiers Decl., Ex. 4, at ¶ 10; Foster Decl., Ex. 9, at
2 ¶¶ 7, 8; Intake Video, Ex. 11, Linescan SW from 2:34:40 – 2:34:46.]

3 22. When the Phoenix officers grabbed Atencio and tried to get his arms behind
4 his back, Atencio was resisting to the point that, even though there was one officer on
5 each of Atencio's arms, they were not able to get his arms behind his back. Atencio was
6 overpowering the Phoenix officers so Weiers took Atencio's left arm to help them get his
7 arms behind his back. [Weiers Decl., Ex. 4, ¶ 10; Intake Video, Ex. 11, Linescan SW
8 from 2:34:40 – 2:34:46.]

9 23. After the Phoenix police officers went hands-on, and had Atencio against
10 the wall, Defendant Foster was able to remove Atencio's right shoe and right sock. He
11 then tried to remove Atencio's left shoe but couldn't get it off because Atencio was
12 overpowering the officers who were trying to control him. [Foster Decl., Ex. 9, at ¶¶ 7-8;
13 Kaiser Decl., Ex. 5, at ¶ 13; Intake Video, Ex. 11, Linescan SW from 2:34:48 – 2:35:11.]

14 24. PPO Hanlon made the decision to try to take Atencio to the ground.
15 [Hanlon Depo., Ex. 1, at 80.]

16 25. Even with several officers helping, they had difficulty taking him to the
17 ground. It was not a hard takedown. [Carrasco Decl., Ex. 10, at ¶¶ 10-11; Foster Decl.,
18 Ex. 9, at ¶ 9; Kaiser Decl., Ex. 5, at ¶ 15; Intake Video, Ex. 11, Linescan SW from
19 2:35:17 – 2:35:25.]

20 26. Atencio ended up partially on his right side on the floor. The officers were
21 unable to get Atencio flat on his stomach because he was fighting. [Carrasco Decl., Ex.
22 10, at ¶¶ 10-11; Foster Decl., Ex. 9, at ¶ 9; Intake Video, Ex. 11, Linescan SW from
23 2:35:17 – 2:35:25.]

24 27. Once Atencio was on the ground, one of Atencio's arms was under his
25 body. Defendant Weiers knelt down on the floor next to Atencio and leaned over, trying
26 to hold onto Atencio's arm. Atencio clawed at Defendant Weiers, trying to grab Weiers'
27 hand. Atencio scratched Weiers. [Weiers Decl., Ex. 4, ¶ 12.]

1 28. Once Atencio was on the ground, Defendant Foster removed Atencio's left
2 shoe and left sock. Atencio continued to fight. Defendant Foster and Defendant Kaiser
3 were trying to control Atencio's legs but Atencio pushed them off like they were paper
4 weight. [Foster Decl., Ex. 9, at ¶ 11.]

5 29. Once Atencio was on the ground, Defendant Kaiser knelt beside him and
6 used his hands to control Atencio's right leg and foot, and get Atencio's legs crossed to
7 better control them. [Kaiser Decl., Ex.5, at ¶¶ 16, 21, Att. C.]

8 30. Defendant Kaiser was trying to hold Atencio's legs but he was unable to
9 because Atencio kept pushing him off. So, Defendant Carrasco knelt down on the floor
10 and assisted Defendant Kaiser with holding Atencio's legs. [Carrasco Decl., Ex. 10, ¶¶
11 12, 24, Att. E; Kaiser Decl., Ex. 5, ¶¶ 16, 17.]

12 31. Defendant Foster yelled that they should get Atencio handcuffed, and he
13 removed his handcuffs from his duty belt. He stood next to Atencio and reached in to try
14 to handcuff him. The detention officers collectively tried to get Atencio handcuffed.
15 [Foster Decl., Ex. 9, at ¶¶ 12, 29, Att. C; Hanlon Depo., Ex. 1, at 80; Intake Video, Ex.
16 11, Linescan SW from 2:35:45 – 2:35:55.]

17 32. Defendant Foster was able to get a handcuff on Atencio's left wrist, but
18 then lost control of it. Atencio continued to struggle. Loose handcuffs are very dangerous
19 and can be used as a weapon. [Foster Decl., Ex. 9, at ¶ 13; June 17, 2013 Deposition of
20 Blas Gabriel, attached as Ex. 17, at 72, 73.]

21 33. Atencio was already on the ground on his stomach when Defendant
22 Dominguez moved to assist in restraining him. Dominguez was at the right upper
23 quadrant of Atencio's body. He grabbed Atencio's right arm and tried to control it while
24 other officers tried to get Atencio handcuffed. [Dominguez Decl., Ex. 7, at ¶¶ 10, 21, Att.
25 F.]

26 34. Defendant Dominguez used only soft hands in trying to control Atencio's
27 right arm to get him handcuffed. [Dominguez Decl., Ex. 7, ¶ 11].

1 35. The officers were trying to get control of Atencio's hand but he kept getting
2 free. The officers were trying to grab different parts of Atencio's wrists and hands, but
3 Atencio was breaking away with no problem. [August 6, 2013 Deposition of Nicholas
4 French ("French Depo."), attached as Ex. 42, at 89-90.]

5 36. Defendant Vazquez entered the search area after Atencio was already on
6 the ground. Shortly after Vazquez entered, Vazquez heard Defendant Weiers say "Taser
7 Taser" and then Weiers deployed the Taser. [Declaration of Jose Vazquez ("Vazquez
8 Decl."), attached as Ex. 12, ¶¶ 6, 7 Intake Video, Ex. 11, Linescan SW from 2:35:35 –
9 2:36:15]

10 37. At approximately 2:36:10 a.m., Defendant Weiers straightened up, still on
11 his knees, and deployed the Taser at Atencio's upper stomach. Defendant Weiers
12 deployed the Taser in one of the only places he could safely do so without harming any
13 of his fellow officers. [Weiers Decl., Ex. 4, at ¶ 14; Weiers Depo., Ex. 6, at 115; Intake
14 Video, Ex. 11, Linescan SW from 2:36:05 – 2:36:18.]

15 38. Weiers deployed the Taser to try to get the situation resolved as quickly as
16 possible and with the least amount of force possible. [Weiers Depo., Ex. 6, at 107-108.]

17 39. Weiers got a narrow or limited spread with the probes, which has reduced
18 effectiveness. So Defendant Weiers leaned forward to attempt to drive stun Atencio's
19 thigh. [Weiers Decl., Ex. 4, at ¶ 14; Intake Video, Ex. 11, Linescan SW from 2:36:12 –
20 2:36:16.]

21 40. At some point during Weiers' attempts to drive stun Atencio, Weiers
22 received the effects of the Taser and fell backwards and away from Atencio. When
23 Weiers regained his balance he again attempted to drive stun Atencio. At that point, other
24 officers were able to handcuff Atencio. [Weiers Decl., Ex. 4, ¶ 15; Intake Video, Ex. 11,
25 Linescan SW from 2:36:12 – 2:36:26.]

26 41. The Taser did not have any effect on Atencio. Atencio continued to
27 struggle and kick and kept going like nothing had happened. It also didn't appear as
28

1 though the drive stun had any effect on Atencio. Indeed, it appeared to make Atencio
2 mad. [Hanlon Depo., Ex. 1, at 85-86; French Depo., Ex. 44, at 72, 90.]

3 42. After Atencio was tased, Defendant Vazquez moved from Atencio's side to
4 near his head and knelt on the floor beside him. Atencio was laying partially on his side
5 with his arms underneath him. [Vazquez Decl., Ex. 12, at ¶¶ 8, 17, Att. E.]

6 43. There was already one handcuff on Atencio, and Defendant Vazquez was
7 able to get a cuff on Atencio's other hand. Instead of handcuffing Atencio behind his
8 back, Vazquez handcuffed him in front. [Vazquez Decl., Ex. 12, at ¶ 10.]

9 44. Once Atencio was handcuffed, Defendant Weiers stood up and other
10 officers also disengaged. [Weiers Decl., Ex. 4, ¶ 15; Intake Video, Ex. 11, Linescan SW
11 from 2:36:56 - 2:37:36.]

12 45. After Atencio was restrained, Defendant Foster stayed by Atencio's legs
13 while he was checked by medical staff and photographs were taken of the Taser puncture
14 wounds. Dominguez and Vazquez stayed by Atencio's upper body. [Foster Decl., Ex. 9,
15 ¶¶ 16, 29, Att. E; Dominguez Decl., Ex. 7, ¶ 21, Att. H; Carrasco Decl., Ex. 10, ¶ 24, Att.
16 F.]

17 46. After Atencio was restrained, Defendant Kaiser had no further contact with
18 him. [Kaiser Decl., Ex. 5, ¶ 19.]

19 47. Atencio was fighting during the entire effort to restrain him in the search
20 area. Atencio was holding his arm under his body. Officers were unable to get Atencio's
21 arm out from under his body to get him handcuffed. Officers were giving Atencio
22 commands like, "Give me your hand. Give me your arm." [Carrasco Decl., Ex. 10, ¶ 13.]

23 48. Atencio was not just resisting. He was combative and actively fighting. He
24 was kicking and squirming. He was flailing, and trying to roll over. He was lifting
25 himself up. [Dominguez Decl., Ex. 7, ¶ 12; Hanlon Depo., Ex. 1, at 82, 85-86.]

26 49. Atencio was 5 feet, 9 inches, weighed 208 pounds, and exhibited unusual
27 strength. [Foster Decl., Ex. 9, ¶ 10; Carrasco Decl., Ex. 10, ¶ 11; Hanlon Depo., Ex. 1, at
28

53; Dominguez Decl., Ex. 7, ¶ 12; Kaiser Decl., Ex. 5, ¶ 14; Medical Examiner's Report, attached as Ex. 41, at 5.]

50. Atencio had no appreciable response to pain compliance techniques that were used on December 16, 2011. [Hanlon Depo., Ex. 1, at 53.]

51. Atencio was not restrained and under control—he was not handcuffed and was still struggling—when Sergeant Weiers deployed the Taser. [Carrasco Decl., Ex. 10, ¶ 14; Dominguez Decl., Ex. 7, ¶ 13; Foster Decl., Ex. 9, ¶ 14; Kaiser Decl., Ex. 5, ¶ 18; Hanlon Depo., Ex. 1, at 51.]

52. Even when the Taser was deployed, the officers were unable to gain compliance from Atencio. Atencio rolled and was able to break the Taser leads. [Foster Decl., Ex. 9, ¶ 14.]

53. After the Taser was deployed, Atencio wasn't complying with commands to give up his hands and let the officers handcuff him. Atencio was pushing with his legs and wouldn't let the officers pull his arms out to be handcuffed. Defendant Vazquez was eventually able to get a handcuff on Atencio's other hand. [Vazquez Decl., Ex. 12, at ¶¶ 9, 10; Foster Decl., Ex. 9, at ¶ 15.]

54. Atencio was under control and being handcuffed at approximately 2:37:07 p.m. [Scheffner Depo., Ex. 13, at 61.]

55. Approximately two and a half minutes passed from the time that Phoenix Officer Hanlon grabbed Atencio's wrist to the time that Atencio was under control and being handcuffed. [Intake Video, Ex. 11, Linescan SW from 2:34:36 - 2:37:09.]

56. Defendant Scheffner responded to the search area after hearing a commotion. He entered the line scan room at 2:36:37. [Declaration of Anthony Scheffner ("Scheffner Decl."), Ex. 16, at ¶¶ 5, 20. Att. A; Scheffner Depo., Ex. 13, at 50; Intake Video, Ex. 11, Linescan SW from 2:36:35 – 2:36:42.]

57. When he entered the room he saw Atencio on the ground, surrounded by a group of officers. He couldn't see much of what was going on. Atencio was struggling with the officers. [Scheffner Decl., Ex. 16, at ¶ 6; Scheffner Depo., Ex. 13, at 50.]

1 58. Defendant Scheffner did not see Atencio being taken to the floor and he did
2 not know how it occurred. [Scheffner Depo., Ex. 13, at 81.]

3 59. Defendant Scheffner had no idea what was going on, or what had occurred
4 prior to his arrival. He saw that two supervisors were already present, Sergeant Weiers
5 and Lieutenant Kaiser. He stood by and observed. He noted that Atencio had been tased.
6 Shortly after he entered the room, Atencio was handcuffed and under control. [Scheffner
7 Decl., Ex. 16, at ¶¶ 7, 8.]

8 60. After Atencio was handcuffed, he made comments to the effect of, “Don’t
9 mess with me. I’m an armed forces sniper.” He also stated something like, “Wait until I
10 catch my breath. I’m going to fuck you guys up.” [Carrasco Decl., Ex. 10, ¶ 16; January
11 17, 2014 Deposition of Sergio Salinas (“Salinas Depo.”), attached as Ex. 14, at 47.]

12 61. When Physician Assistant Ian Cranmer asked Atencio if he was okay,
13 Atencio responded, “Anybody that touches me, I’m going to fucking kill you.” Cranmer
14 heard a stream of profanities, and saw Atencio struggling. Cranmer was concerned for his
15 safety. [November 21, 2013 Deposition of Ian Cranmer (“Cranmer Depo.”), attached as
16 Ex. 27, at 48-49.]

17 62. In their efforts to gain control of Atencio in the search area, none of the
18 MCSO detention officers were on top of Atencio. They did not lay on Atencio, sit on
19 Atencio, kneel on Atencio, or press on Atencio’s back. [Salinas Depo., Ex. 14, at 58; May
20 19, 2014 Deposition of Bradd Walston (“Walston Depo.”), attached as Ex. 15, at 45;
21 Scheffner Depo., Ex. 13, at 51; Intake Video, Ex. 11, Linescan SW.]

22 63. After CHS staff responded and evaluated Atencio, Scheffner instructed
23 officers to make sure Atencio was searched. During the pat down search before he was
24 taken to the safe cell, Atencio was still struggling. He was kicking his feet out and not
25 letting the officers roll him over to search him. [Scheffner Decl., Ex. 16, at ¶¶ 9, 11;
26 Carrasco Decl., Ex. 10 at ¶ 17; Foster Decl., Ex. 9, at ¶ 17.]

Events in the Safe Cell

64. After the officers searched Atencio, he was carried into a safe cell and placed on the ground. [Carrasco Decl., Ex. 10, at ¶ 18; Intake Video, Ex. 11, E Hall Safe Cell View from 2:41:13 – 2:41:20, Safe Cell from 2:41:18- 2:41:24.]

65. Using an escort team of five officers to carry a detainee is a widely accepted practice in the field of corrections for the safe and humane transport of a restrained inmate. Typically, each member controls a certain body part: one member is responsible for the head and upper torso area, and each of the other four members is responsible for controlling an arm or a leg. [Gravette Decl., Ex. 8, at ¶ 16.]

66. Removing clothing in a safe cell is a standard corrections practice where a detainee has made statements that he is or may be suicidal. Anything that a detainee could use to harm himself, including his clothing, must be removed. In Maricopa County, the inmate is given a suicide blanket for modesty. [Gravette Decl., Ex. 8, at ¶ 18; Weiers Decl., Ex. 4, ¶ 18; June 17, 2013 Deposition of Blas Gabriel (“Gabriel Depo.”), attached as Ex. 17, at 59.]

67. The isolation cell in the pre-intake area where Atencio was held before he was brought to the search room had hard benches, a stainless steel toilet, and a concrete floor and walls. The safe cell where Atencio was placed was constructed of a soft cushion material, and no other objects are in the cell for an inmate to harm himself with. [Gravette Decl., Ex. 8, ¶ 14.]

68. Defendants Dominguez and Foster assisted in carrying Atencio to the safe cell. [Dominguez Decl., Ex. 7, at ¶¶ 16-17; Foster Decl., Ex. 9, at ¶ 18].

69. Defendant Scheffner followed the officers and Atencio to the safe cell. After they had entered the safe cell, Scheffner stood at the doorway of the safe cell and briefly stepped inside, but then stepped right back out again. Scheffner did not see what occurred inside the safe cell. [Scheffner Decl., Ex. 16, ¶ 12; Scheffner Depo., Ex. 13, at 67, 81.]

1 70. Once the officers laid Atencio down in the safe cell and started removing
2 his clothes, Atencio started wrestling with the officers. [Foster Decl., Ex. 9, at ¶ 18].

3 71. Defendant Foster assisted in removing Atencio's pants and underwear and
4 crossing his legs. [Foster Decl., Ex. 9, at ¶ 19].

5 72. Defendant Carrasco entered the safe cell after other officers carried Atencio
6 in. Once Defendant Carrasco was in the safe cell, he was on Atencio's left side near his
7 feet. He bent over and helped Detention Officer Foster remove Atencio's pants and
8 underwear. [Carrasco Decl., Ex. 10, ¶¶ 19, 24, Att. F-G.]

9 73. Defendant Carrasco then knelt on the floor beside and held Atencio's legs,
10 which were crossed and bent at the knees, while other officers were removing the rest of
11 his clothing. [Carrasco Decl., Ex. 10, at ¶¶ 20, 24, Att. F-G.]

12 74. While Defendant Carrasco was holding Atencio's legs in the safe cell, he
13 was pushing hard against Carrasco. Atencio had a lot of strength in his legs and moved
14 Carrasco back more than once. At one point Atencio was pushing so hard that he almost
15 completely straightened out his right leg even though Carrasco was trying to keep it bent.
16 [Carrasco Decl., Ex. 10, at ¶ 21.]

17 75. After helping to remove Atencio's pants and underwear, Foster moved to
18 Atencio's upper torso to help with the handcuffs because Officer Salinas was having
19 trouble removing the handcuffs. Foster took Officer Salinas's handcuff key and was able
20 to get the handcuffs off. [Foster Decl., Ex. 9, at ¶¶ 19, 29, Att. K-L.]

21 76. Defendant Vazquez was on Atencio's left side. Vazquez's knee was against
22 Atencio's left side, to control him, but Vazquez's weight was not on him. Vazquez
23 helped to remove Atencio's shirt. He lifted up Atencio's head so officers could get
24 Atencio's shirt over his head. [Vazquez Decl., Ex. 12, at ¶¶ 14, 15, 17, Att. I-J.]

25 77. Defendant Dominguez held Atencio's right arm while Atencio's clothes
26 were being removed. Dominguez's right hand was on Atencio's wrist, and his left hand
27 was on Atencio's arm near the biceps area. Dominguez had one knee on the floor of the
28 safe cell and one knee up. [Dominguez Decl., Ex. 7, at ¶¶ 18, 21, Att. I-K.]

1 78. Defendant Dominguez did not use any force other than soft hands to control
2 Atencio's right arm in the safe cell while the officers removed Atencio's clothes and took
3 off the handcuffs. [Dominguez Decl., Ex. 7, at ¶ 18.]

4 79. Defendant Dominguez also assisted with removing Atencio's shirt.
5 [Dominguez Decl., Ex. 7, at ¶ 19.]

6 80. After the rest of Atencio's clothing and the handcuffs were removed,
7 Defendant Carrasco and the rest of the detention officers exited the safe cell by backing
8 out. [Carrasco Decl., Ex. 10, at ¶ 22; Intake Video, Ex. 11., Safe Cell from 2:42:46 –
9 2:43:17.]

10 81. After exiting the safe cell, Defendant Carrasco had no further contact with
11 Atencio. [Carrasco Decl., Ex. 10, at ¶ 23.]

12 82. In the safe cell, the detention officers were telling Atencio to stay still,
13 relax, and stop resisting. But Atencio was still moving around, squirming and not
14 complying. Atencio was trying to get up, and rocking from side to side. [Dominguez
15 Decl., Ex. 7, ¶ 17; Scheffner Decl., Ex. 16, at ¶ 13.]

16 83. Atencio was still pretty strong even after he was in the safe cell. Defendant
17 Vazquez saw Atencio was pushing Defendant Carrasco back as Carrasco was trying to
18 cross Atencio's legs. Defendant Vazquez also felt it because he was kneeling by
19 Atencio's side. [Vazquez Decl., Ex. 12, at ¶ 15.]

20 84. The detention officers were having such a hard time removing Atencio's
21 shirt in the safe cell that they asked Sergeant Weiers if they could cut it off. [Weiers
22 Depo., Ex. 6, at 121, 124.]

23 85. Atencio continued to fight throughout the time the officers were trying to
24 undress him and take the handcuffs off. [Foster Decl., Ex. 9, at ¶ 20].

25 86. As officers exited the safe cell, Atencio was still talking. [Foster Decl., Ex.
26 9, at ¶ 21.]

87. During Defendant Foster's entire contact with Atencio, he did not use any force other than soft empty hands in trying to control him, remove items of clothing, and get him handcuffed and un-handcuffed. [Foster Decl., Ex. 9, at ¶ 28.]

88. During Defendant Kaiser's entire contact with Atencio, he did not use any force other than soft empty hands. [Kaiser Decl., Ex. 5, at ¶ 20].

89. Defendant Scheffner had no physical contact with Atencio on December 16, 2011. [Scheffner Decl., Ex. 16, at ¶ 19; Scheffner Depo., Ex. 13, at 81; Plaintiffs’ Responses to Defendants Carrasco, Dominguez, Foster, Kaiser, Scheffner, Vazquez and Weiers’ Requests for Admission (“Response to Officers’ RFAs”), attached as Ex. 20, at 6].

90. During Weiers' contact with Atencio, the only force he used was the Taser and soft empty hands to try to control Atencio so that other officers could get him handcuffed. [Weiers Decl., Ex. 4, at ¶ 26.]

91. The actions of the individual detention officers, including Sergeant Weiers' use of the Taser, were justified and reasonable, and consistent with the policies of the Maricopa County Sheriff's Office, Arizona state law, and national standards of care as expressed by the American Correctional Association. The detention officers used only the force necessary, to control and secure Atencio. [Gravette Decl., Ex. 8, at ¶¶ 9-12.]

Plaintiffs' Excessive Force Claims

92. Plaintiffs contend that Defendants Carrasco, Dominguez, and Vazquez used excessive force and breached a duty of care to Atencio by “forming a ‘dog pile’ on top of Marty,” in the line scan room and by holding Atencio down in the safe cell while another officer struck Atencio. [Plaintiffs’ First Amended Complaint (“FAC”) at ¶¶ 62, 70; Plaintiff Ernest Joseph Atencio’s Response to Defendants Weiers, Vazquez, Scheffner, Kaiser, Foster, Dominguez and Carrasco’s First Set of Interrogatories to Plaintiffs (“Responses to Officers’ First Set of Interrogatories”), attached as Ex. 18, at 4-5, 7-9.]

1 93. Plaintiffs contend that Defendant Kaiser used excessive force and breached
2 a duty of care to Atencio by “forming a ‘dog pile’ on top of Marty.” [Responses to
3 Officers’ First Set of Interrogatories, Ex. 18, at 6-7.]

4 94. The term “dog pile” refers “to the time period where numerous individual
5 defendants were on top of Marty Atencio in the line scan room.” [Plaintiffs’ Response to
6 Defendant Arpaio’s Second Set of Interrogatories to Plaintiffs, attached as Ex. 34, at 3.]

7 95. Other than participation in the “dog pile,” Plaintiffs cannot identify any use
8 of force by Defendants Carrasco, Dominguez, Foster, Kaiser, and Vazquez but they
9 contend that they cannot rule out these officers’ possible use of additional types of
10 excessive force in the line scan room such as “kicking, kneeing, punching, hitting,
11 slapping, or crushing.” [Responses to Officers RFAs, Ex. 20, at 2-4, 7; Plaintiffs’ Second
12 Amended Responses to Defendants Weiers, Vazquez, Scheffner, Kaiser, Foster,
13 Dominguez and Carrasco’s First Set of Interrogatories (“Second Amended Responses to
14 Officers’ First Set of Interrogatories”), attached as Ex. 21, at 4-10.]

15 96. Plaintiffs contend that Defendant Scheffner violated Atencio’s rights and
16 the standard of care because he “observed the unreasonable use of force against Marty
17 and failed to intervene.” He also “ordered Marty to be placed in MCSO’s ‘safe’ cell.”
18 [Responses to Officers’ First Set of Interrogatories, Ex. 18, at 5-6; FAC at ¶¶ 67, 68.]

19 97. Plaintiffs admit that Defendant Scheffner did not use force against Atencio.
20 [Plaintiffs’ Responses to Defendants Carrasco, Dominguez, Foster, Kaiser, Scheffner,
21 Vazquez and Weiers’ Requests for Admission (“Responses to Officers’ RFAs”), attached
22 as Ex. 20, at 6.]

23 98. Plaintiffs contend that Defendant Weiers used excessive force and breached
24 a duty of care to Atencio “by tasing him, multiple times, including, at least one time, in a
25 manner close to Marty’s heart. Sergeant Weiers knew, or should have known, that using a
26 taser in this fashion created an unreasonable risk of harm.” Plaintiffs also contend that
27 Defendant Weiers used excessive force by his “general involvement in the ‘dogpile.’”
28 [Responses to Officers’ First Set of Interrogatories, Ex. 18, at 3-4; Plaintiffs’ Responses

1 to Defendant Carrasco, Dominguez, Foster, Kaiser, Scheffner, Vazquez and Weiers'
2 Second Set of Interrogatories (“Responses to Officers’ Second Set of Interrogatories”),
3 attached as Ex. 19, at 8.]

4 99. Plaintiffs admit that Defendant Weiers did not use force against Atencio
5 after Atencio was carried out of the line scan room. [Responses to Officers’ RFAs, Ex.
6 20, at 8.]

7 100. Plaintiffs cannot identify any other use of force by Defendant Weiers in the
8 line scan room but contend that they cannot rule out Defendant Weiers’s possible use of
9 additional types of excessive force in the line scan room such as “kicking, kneeling,
10 punching, hitting, slapping, or crushing.” [Plaintiff Ernest Joseph Atencio’s Second
11 Amended Response to Defendants Weiers, Vazquez, Scheffner, Kaiser, Foster,
12 Dominguez, and Carrasco’s First Set of Interrogatories to Plaintiffs (“Second Amended
13 Responses to Officers’ First Set of Interrogatories”) attached as Ex. 21, at 4.]

14 Taser Use

15 101. Dr. Stano verified that the marks depicted in the photograph labeled as
16 Exhibit 3 to Dr. Stano’s deposition are the Taser probe wounds. They were below
17 Atencio’s heart. [November 27, 2013 Deposition of William Stano, M.D. and Exhibit 63
18 (“Stano Depo.”), attached as Ex. 38, at 106].

19 102. Probe deployment of a TASER electronic control device is designed to
20 induce neuromuscular incapacitation. Effectiveness increases as a function of the spread
21 of the probes. [Declaration of Michael Brave (“Brave Decl.”), attached as Ex. 25, ¶ 9.]

22 103. Three-point deployment is a combination of use of the electronic control
23 device in both probe-deployment mode followed up by a simultaneous drive stun. Three-
24 point deployment is used to gain neuromuscular incapacitation when, for whatever
25 reason, a deployed probe is not succeeding in achieving the desired neuromuscular
26 incapacitation. A three-point deployment is used to try to create a wide electrode spread
27 to significantly increase the probability of achieving neuromuscular incapacitation.
28 [Brave Decl., Ex. 25, ¶ 10.]

1 104. According to the literature, TASER electronic control devices have a lower
2 probability of injury than other force options, including hands-on physical force. [Brave
3 Decl., Ex. 25, ¶ 11.]

4 105. The use of the electronic control device was the force option with the
5 greater probability of being effective in controlling Atencio. [Brave Decl., Ex. 25, ¶ 12.]

6 106. The TASER's quantum of force used on Atencio was very minimal due to
7 the circumstances of the incident. Atencio was obese and had significant fat layers where
8 the probes impacted. There was no risk of fall injury because Atencio was already on the
9 ground. There was no risk of motion or momentum injury because Atencio was not in
10 motion. [Brave Decl., Ex. 25, ¶ 13.]

11 107. Defendant Weiers' three-four point deployment had the highest probability
12 of achieving control of Atencio. Defendant Weiers deployed the cartridge with the probes
13 striking Atencio in the abdomen. Atencio's obesity, the limited probe spread, and the
14 location of the probe impacts were not sufficient to likely induce neuromuscular
15 incapacitation. Defendant Weiers' application of the TASER in drive-stun to the back of
16 Atencio's left thigh had an increased probability of creating a completed circuit and
17 allowing for neuromuscular incapacitation to attempt to control Atencio. [Brave Decl.,
18 Ex. 25, ¶ 15; Photographs of TASER probe marks, attached as Ex. 26.]

19 108. ECD trigger pulls or discharges do not indicate delivered electrical charge
20 to the person. Although the data downloaded from Sergeant Weiers' ECD showed a total
21 ECD discharge of 22 seconds, there are statements that the probes were dislodged during
22 the incident. Once the probes are dislodged, the ability to maintain an electrical circuit
23 capable of delivering an electrical charge would be negatively affected. (Brave Decl., Ex.
24 25, ¶ 14).

25 109. The ECD drive stun marks on the back of Atencio's left thigh are consistent
26 with Atencio's struggling and movements, intermittent ECD contact, and EVD bouncing
27 and skipping from the contact and control attempts. The marks indicate that the contact
28 between the ECD and Atencio's thigh were not continuous. (Brave Decl., Ex. 25, ¶ 16).

Defendant Arpaio

110. Defendant Scheffner has never heard that Sheriff Arpaio has a philosophy that the jail should be a place of punishment. He has never observed an MCSO deputy express to a detainee at the Fourth Avenue Jail or any jail that the jail is a place of punishment. [Scheffner Depo., Ex. 13, at 73-74.]

111. Defendant Weiers has never heard that Sheriff Arpaio has a philosophy that the jail should be a place of punishment. He has never observed an MCSO deputy express to a detainee in the Fourth Avenue facility that the jail is a place of punishment. [Weiers Depo., Ex. 6 at 161.]

112. Detention Officer Gabriel has never heard that Sheriff Arpaio has a philosophy that jail should be a place of punishment. He has never observed MCSO deputies express to detainees that the jail is a place of punishment. [Gabriel Depo., Ex. 17, at 31.]

113. Former Detention Officer Sergio Salinas never heard during his five years of working at Maricopa County that Sheriff Arpaio has a philosophy that the jail should be a place of punishment. He has not observed MCSO deputies express to detainees at the Fourth Avenue jail that the jail is a place of punishment. [Salinas Depo., Ex. 14, at 41-42.]

114. Statistics from December 2008 to August 2010 show that only eight use of force reports were generated for Intake during that 21-month period. [June 8, 2011 Declaration of James P. Seibert, attached as Ex. 35, at ¶ 66, Exhibit O.]

115. MCSO policy requires a use of force report when a force option is used that has a probability of causing injury, such as an intermediate control technique or an intermediate weapon. [MCSO Use of Force Policy, attached as Ex. 23, at p. 4, ¶ 9.]

116. Intermediate control techniques include the use of joint locks, wristlocks, and come-alongs. Intermediate weapons include batons, and oleoresin capicum spray, and electronic control devices such as a Taser. [MCSO Use of Force Policy, Ex. 23, at p. 3.]

1 117. In 2011, on average, more than 300 detainees were booked each day in
2 Intake. [Declaration of Gerard Sheridan (“Sheridan Decl.”), attached as Ex. 36, at ¶ 5.]

3 118. The Fourth Avenue Jail opened in April 2005. Central Intake, or Intake, is
4 located in the Fourth Avenue Jail. [Sheridan Decl., Ex. 36, at ¶ 6.]

5 119. Detention policies and procedures in general, including in Intake, have
6 changed and evolved since 1999 when I became Chief of Custody. New procedures
7 regarding booking have been put into place since Intake was moved from the Madison
8 Street Jail to the Fourth Avenue Jail in 2005. [Sheridan Decl., Ex. 36, at ¶ 7.]

9 120. MCSO’s use of force policy has also changed and evolved since 1999. For
10 example, in the early 2000s, MCSO policy authorized the use of restraint chairs. By
11 2011, restraint chairs were no longer allowed by policy, and they are no longer used in
12 the Maricopa County jails. [Sheridan Decl., Ex. 36, at ¶ 8.]

13 121. Jeffrey Alvarez, M.D., the Correctional Health Services (“CHS”) medical
14 director, is the responsible physician for the jail system in Maricopa County. [February 7,
15 2014 Deposition of Jeffrey Alvarez (“Alvarez Depo.”), attached as Ex. 28, at 9].

16 122. The CHS medical director supervises the medical providers in all the
17 different jail facilities. [Alvarez Depo., Ex. 28, at 9.]

18 123. The CHS Director is responsible for staffing of personnel, including
19 medical doctors, psychiatrists, nurse practitioners, physician assistants, dentists, and
20 psychologists. [September 18, 2013 Declaration of Thomas J. Tegeler, attached as Ex. 31,
21 at ¶¶ 4, 5.]

22 124. CHS’s Mental Health Director is responsible for supervising mental health
23 staff, including psychiatrists, midlevel psychiatric providers, psychologists, and mental
24 health professionals. [September 23, 2013 Declaration of Dawn Noggle, Ph.D. (“Noggle
25 Decl.”), attached as Ex. 32, ¶ 5.]

26 125. The Mental Health Director is also responsible for mental health
27 programming across a range of settings including screening and intake, and acute and
28 subacute mental health units. [Noggle Decl., Ex. 32, ¶ 3.]

1 126. Dawn Noggle is the mental health director for Correctional Health
2 Services. She is the final policymaker for Correctional Health Services with respect to
3 mental health care. [March 31, 2014 Deposition of Dawn Noggle (“Noggle Depo.”),
4 attached as Ex. 30, at 10, 112, 114-115.]

5 127. Sheriff Arpaio doesn’t have the budget that manages healthcare in the jails.
6 Maricopa County’s budget covers medical care in the jails, and the County’s budget
7 doesn’t mix with the Sheriff’s budget. [Alvarez Depo., Ex. 28, at 113-114.]

8 128. In 2004, Sheriff Arpaio wrote to Maricopa County Administrator David
9 Smith, requesting that Correctional Health Services be transferred to the Sheriff’s Office.
10 [October 7, 2004 letter to David Smith, attached as Ex. 29.]

11 129. In 2010, Sheriff Arpaio unsuccessfully sued Maricopa County for control
12 of Correctional Health Services. [April 6, 2010 Article from Arizona Republic, “Judge
13 Denies Arpaio’s Attempts to Take Over Jail Health Care,” attached as Ex. 37]

14 130. Sheriff Arpaio’s statements about jails as places of punishment do no refer
15 to the jail being a place of physical punishment. When he uses the word “punishment”
16 it’s in the sense of taking things away from people, not physically punishing people. [July
17 22, 2014 Deposition of Gerard Sheridan, attached as Ex. 33, at 26-28.]

18 131. Out of Defendants Carrasco, Dominguez, Foster, Kaiser, Scheffner,
19 Vazquez, and Weiers, only Defendant Kaiser was employed with MCSO before 2000.
20 The others were all hired in 2002 or later. [Carrasco Decl., Ex. 10 at ¶ 3; Dominguez
21 Decl., Ex. 7, at ¶ 3; Foster Decl., Ex. 9, at ¶ 3; Kaiser Decl., Ex. 5, at ¶ 3; Scheffner
22 Depo., Ex. 13, at 18-19; Vazquez Decl., Ex. 12, at ¶ 3; Weiers Decl., Ex. 4, at ¶ 3.]

23 132. Plaintiffs contend that Defendant Arpaio is liable in his individual capacity
24 because: (1) he was aware of a long history of deliberate indifference to the provision of
25 medical care to those in the County jails; and (2) he stated that he wanted his jails to be
26 “places of punishment.” [Plaintiff Ernest Joseph Atencio’s Amended Response to
27 Arpaio’s First Set of Interrogatories, attached as Ex. 22, at 4-9.]

133. Plaintiffs contend that Defendant Arpaio is liable in his official capacity because he is a policymaker and he ratified the acts of the individual defendants because he knew of and specifically approved of their acts. [Plaintiff Ernest Joseph Atencio's Amended Response to Arpaio's First Set of Interrogatories, Ex. 22, at 9.]

134. Plaintiffs also contend that Defendant Arpaio created a custom, policy, or practice of excessive use of force in the Maricopa County jails. [Plaintiff Ernest Joseph Atencio's Amended Response to Arpaio's First Set of Interrogatories, Ex. 22, at 9-11.]

135. Plaintiffs' Interrogatory Response cites to twenty-seven documents in support of their contention that Defendant Arpaio created a custom, policy, or practice of excessive use of force in the Maricopa County jails. Two of them are duplicates. Eliminating the duplicates, nineteen of the twenty-five documents are dated before 2001, and thus reflect events and circumstances more than ten years prior to the events involving Atencio. Thirteen of them are dated between 1995 and 1997. Eleven documents are news articles. The most recent document cited is the Second Amended Judgment and Findings of Fact and Conclusions of Law and Order in *Graves v. Arpaio*, CV77-0479-PHX-NVW, dated October 22, 2008 (Docs. 1635 and 1634, respectively). [Atencio's Amended Response to Arpaio's First Set of Interrogatories, Ex. 22, at 10-11.]

Causation

136. In reaching his opinions, Todd Wilcox, M.D. reviewed only Atencio's medical records from December 16, 2011 from CHS and the Phoenix Fire Department, and his St. Joseph's Hospital Records from December 16-20, 2011. [Todd Wilcox's February 12, 2014 Expert Report ("Wilcox Report"), attached as Ex. 39, at 2-6.]

137. Dr. Wilcox's Report expresses his causation opinion in one sentence of one paragraph :

“The death of Mr. Atencio was completely preventable and unnecessary. He was a psychotic non-violent patient who was suffocated, beaten and shocked to death. He needed treatment and understanding, not punishment for being mentally ill. At the time of his admission into jail his vital signs were normal. But for his interaction with law enforcement and his subsequent violent subdual by law enforcement, there is no evidence that he

1 had any prodromal condition, symptom, or exam finding consistent with
2 impending cardiac failure or anoxic brain injury.”

3 [Wilcox Report, Ex. 39, at 22.]

4 138. Dr. Wilcox’s February 12, 2014 report does not list the autopsy report as a
5 material reviewed and considered in reaching his opinions. [Wilcox Report, Ex. 39, at 2-
6 6.]

7 139. Dr. Wilcox did not review any of Atencio’s extensive medical records from
8 other providers prior to 2011. [Wilcox Depo., Ex. 40, at 246.]

9 140. Dr. Wilcox practices correctional health care medicine. He is not a medical
10 examiner and he has never worked as one. [Wilcox Depo., Ex. 40, at 248, 251.]

11 141. Dr. Wilcox did not parse out each use of force. He did not consider whether
12 Atencio would have died even if the TASER had not been used, or if Atencio would have
13 submitted to being handcuffed. [Wilcox Depo., Ex. 40, at 252-253, 256.]

14 142. Dr. Wilcox ruled out causes of death that he believed were not relevant,
15 such as diabetic ketoacidosis, subdural hematoma, and sepsis. [Wilcox Depo., Ex. 40, at
16 254.]

17 143. Dr. William Stano is the deputy chief medical examiner for the Maricopa
18 County Medical Examiner’s office and performed Atencio’s autopsy and has been a
19 medical examiner since August of 2006. Dr. Stano is board certified in anatomic
20 pathology and forensic pathology. [Stano Depo., Ex. 38, at 7, 10-11.]

21 144. The cause of Atencio’s death was cardiac arrest, but the reason why the
22 cardiac arrest occurred is unknown. Atencio’s psychosis, the law enforcement subdual,
23 and Atencio’s multiple medical problems are all risk factors, but not contributory causes.
24 [Stano Depo., Ex. 38, at 54.]

25 145. The immediate electrical shock by the TASER did not have anything to do
26 with Atencio’s death. [Stano Depo., Ex. 38, at 57.]

27 146. Atencio had an enlarged heart and coronary artery disease, both of which
28 can cause sudden cardiac arrest. [Stano Depo., Ex. 38, at 100.]

147. Atencio had a clinical history of abuse and dependence on more than one substance, including alcohol, marijuana, and methamphetamine. Drug abuse is a risk factor for cardiac arrest. [Stano Depo., Ex. 38, at 100-101.]

148. Of the medical problems listed in the autopsy report, any one of several of the problems listed under section 5 of page 2 in the autopsy report would be enough to cause Atencio's death. [Stano Depo., Ex. 38, at 102; Medical Examiner's Report, attached as Ex. 41, at page 2, section 5.]

149. Atencio was diagnosed with schizoaffective disorder. Studies show that patients with schizophrenia have been reported to be three times more likely to experience sudden cardiac arrest than individuals from the general population. [Stano Depo., Ex. 38, at 103-104.]

DATED this 26th day of September, 2014.

RYLEY CARLOCK & APPLEWHITE

By /s/ Lisa S. Wahlin

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2 **CERTIFICATE OF SERVICE**

3 I hereby certify that on September 26, 2014, I electronically transmitted the
4 foregoing document to the Clerk's Office using the CM/ECF system for filing and
transmittal of Notice of Electronic filing to the following CM/ECF registrants:

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